

## **Agreement For Professional Services**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 14<sup>th</sup> day of May, 2019 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, (the "Town"), and **Burns & McDonnell Engineering Company, Inc.**, an independent contractor with a principal place of business at **9785 Maroon Circle, Suite 400, Centennial, Colorado 80112** ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **I. SCOPE OF SERVICES**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference and known as: Construction Administrative Services for the Water Treatment Plant Expansion (P18-262).

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

### **II. TERM AND TERMINATION**

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity. Contractor shall not be liable for use of incomplete or draft documents by the Town.

### **III. COMPENSATION**

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor **\$806,722**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit monthly invoices, which shall be paid by the Town within 30 days of receipt.

#### **IV. PROFESSIONAL RESPONSIBILITY**

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work except as expressly set forth in the Scope of Services.

#### **V. OWNERSHIP**

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

#### **VI. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

#### **VII. INSURANCE**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.

2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

### **VIII. INDEMNIFICATION**

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

### **IX. ILLEGAL ALIENS**

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.





**EXHIBIT A**  
**SCOPE OF SERVICES**

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

**500 Construction Phase Engineering Services**

Contractor shall provide for general administration of the construction contract with the Construction Manager At Risk (CMAR). Specific tasks included within the administration of the construction contract include the following services:

- 501 Preconstruction Conference – Schedule and conduct preconstruction conference. Prepare minutes of the proceedings of the conference and distribute copies to OWNER and those in attendance.
- 502 Weekly Progress Meetings – Prepare for and attend meetings on weekly basis for 16- month duration of construction (67-weeks). Attended by project manager with senior engineering discipline lead as required to consult with the Town and CMAR during the construction period relative to general administration of the construction. Weekly meeting duration of two hours. Assumed engineering discipline support at 50% of weekly meetings.
- 503 Weekly Site Visits – Conduct visit of job site progress on same day as weekly progress meeting. Conduct on-site observations of the work in progress to determine if the work is proceeding in accordance with the Contract Documents. Provide a weekly summary report of construction progress. Duration of two hours before weekly progress meeting during construction activities, assumed as 75% of overall duration (50-weeks).
- 504 Compliance Site Visits – Specific discipline engineers to visit the site at times required to observe critical events or progress. Assumed as 24 additional site visits of 6-hour duration for two engineers. This may include work observation of yard piping, process equipment, HVAC, plumbing or electrical as required, exclusive of special inspections.
- 505 Special Inspections– Specific discipline engineers to visit as required by applicable codes to observe critical events or progress. Assumed as 4-hour trip, 2 to 3 days per week over 20 week period during structural concrete, masonry and structural steel connections. Special inspection for the following items
  - a. Material verification of high-strength bolts
  - b. Visual inspection of pre-tensioning
  - c. Material verification of structural steel
  - d. Visual inspection of steel frame joint details
  - e. Material verification of cold-formed steel deck material
  - f. Visual inspection of concrete formwork
  - g. Visual inspection of concrete reinforcement

- h. Visual inspection of cast in place concrete placement
- i. Visual inspection of cast in place concrete curing conditions/methods
- j. Visual inspection of size and placement of cast in place and post installed anchors
- k. Confirm compliance of masonry construction with approved documents
- l. Visual inspection of masonry size, placement, and conditions to conform with approved documents
- m. Visual inspection of grout space prior to placement and grout placement

The CMAR will be responsible for materials testing and weld inspections. This will include density testing of subgrade, welding materials and finished welding visual inspection of welds, concrete materials testing and verification of properties, grout materials testing and verification of properties. The Contractor will be responsible for sub-contracting with a testing agency to perform materials testing to verify that the CMAR tests are in conformance with the specifications.

- 506 Materials Testing Coordination – The Contractor will subcontract the services of Kumar & Associates to provide materials testing for the project, with Kumar’s costs paid by an allowance. The costs in this task include management costs for coordinating Kumar’s contract.
- 507 Construction Oversight and Residential Project Representative (RPR)
  - a. Observe the progress and quality of the work as is reasonably necessary at various stages of construction to determine if the work is proceeding in accordance with the Contract Documents. Keep the Town informed about the progress and quality of the portion of the Work completed.
  - b. Review and monitor the progress schedule, schedule of shop drawings and other submittals prepared by CMAR and take necessary and appropriate action concerning acceptability.
  - c. Attend meetings with CMAR and Town, such as preconstruction conferences, progress meetings, job conferences, and other project-related meetings, and prepare and circulate copies of minutes thereof, and keep Town advised as necessary.
  - d. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel.
  - e. Maintain, at Contractor’s field office, orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Requests for Information, Construction Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to

the execution of the Contract, clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals and other project related documents. Maintain an updated set of Contract Documents showing "Conforming to Construction Records" conditions based on the CMAR's records and the RPR's observations and inspections.

- f. Review checklists of work to be completed or corrected with a request for issuance of a certificate of substantial completion. Conduct an inspection with the Town to check conformance of the Work with the requirements of the Contract Documents and, if the checklists are accurate and complete take the necessary action for disposition.
- g. Conduct a final inspection, accompanied by Town, prepare a final checklist of items to be completed or corrected, and prepare documentation for transmittal to the Town as required to close out the Project, including: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment;(2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the OWNER against liens; and (3) any other documentation required of the Contractor under the Contract Documents.
- h. Assumed effort staggered to reflect site activities:
  - i. 75% of construction duration (50 weeks)
  - ii. 20 weeks at 40 hours per week
  - iii. 15 weeks at 30 hours per week
  - iv. 15 weeks at 20 hours per week

508 Submittal Review – Review and approve (or take other appropriate action in respect of) Shop Drawings, Samples, and other submittals and data required to ascertain and ensure their conformance with the Contract Documents. Assumes 150 submittals at 3-hours per initial submittal and 1.5 hours for each of 75 re-submittals.

509 Construction Administration Engineering Services –

- i. Review and respond to requests for information (RFI) in writing. Prepare and issue supplemental Drawings and Specifications as necessary in response to RFIs. Maintain an orderly record of all RFIs, responses provided to the General Contractor, and documentation of each RFI's resolution.
- j. Review and inform Town of construction schedule.
- k. Review and prepare field orders as necessary.
- l. Review cost change proposals and provide office staff support for the project.
- m. Receive, review and transmit to Town, with written comments, operating and maintenance instructions, schedules, guarantees, or certificates required by the Contract Documents, certificates of inspection, tests and approvals, and marked up record documents (including Shop Drawings, samples and other data approved as provided) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.

Assumed 8 hours per week over construction duration of 16-months, spread across project manager and engineering disciplines

### **600 Post-Construction Engineering Services**

Contractor shall provide for post-construction engineering services as follows:

601 Start-Up Assistance – Facility start-up shall be performed by the CMAR and the Town with Contractor as needed for operating recommendations. The Town’s Operation Staff shall oversee operations once raw water is introduced into the new facility. The CMAR shall complete instrumentation and control construction (installation and adjustment) including all items that require water to be present. Contractor shall provide guidance and recommendations to help resolve start-up issues in a timely manner. Assumed full time support over 6-weeks of start-up (240 hours)

- a. Pre-Start-Up Workshop: To aide in the start-up planning, the Contractor shall conduct a pre-start-up planning workshop with the Town and the CMAR prior to introducing water into each new process of the facility.
- b. Equipment Operations Training: Equipment training requirements shall be included within the construction document specifications. The CMAR shall be responsible for ensuring that equipment vendors complete the training requirements as outlined in the specifications.

602 Final Inspection – Contractor shall conduct a final inspection and issue a final Certificate for Payment indicating that all Work complies with the requirements of the Contract Documents.

603 CDPHE Certifications – Contractor shall issue CDPHE Certification of completion per approved design and/or work through changes to secure final approval from CDPHE of plant construction.

604 Operation and Maintenance (O&M) Manual Preparation - The O&M manual prepared by Contractor shall be a paper version document. It shall coordinate descriptions of the facility processes with the physical operation and periodic maintenance of the mechanical equipment performing those processes. A final O&M Manual shall be prepared and presented in its final form by the completion of construction. The final O&M Manual shall also list the operation and control parameters based on the design intent for control of the new facility. The content of the O&M Manual prepared by Contractor shall satisfy all requirements of the applicable regulatory agencies required to review and/or approve the document and include, at minimum:

- Information regarding actual equipment supplied and reflect changes, which may have been made throughout construction.
- An overall description of each system and its intended performance represented as a schematic diagram.

- A description of the primary equipment and equipment identification methods.
- P & ID Drawings
- System or building plans showing the record as-built locations of major equipment and piping in order to convey the operational intent.
- Step sequencing for start-up, normal operation, and shut-down

Final O&M Manual: Four (4) paper copies for the Town, paper copies as required by the regulatory agencies, and one (1) electronic version (pdf).

605 Record Drawings – Contractor shall prepare conforming to construction record drawings of the constructed facilities. The final set of record drawings furnished shall be “Revised According to Construction Records” in accordance with records provided by Contractor’s RPR and CMAR. Deliverables:

- a. Draft Record Drawings: One (1) complete paper copy for review and comment by the Town.
- b. Final Record Drawings: One full size paper copy and three (3) half size paper copies with a laminated covers (both front and back) and bound for easy page replacement and electronic versions in both PDF and AutoCAD format. In addition Contractor shall provide the information required for entry into the Town’s GIS system in accordance with the current User Guide.

#### Materials Testing Allowance

The Contractor will subcontract the services of Kumar & Associates to provide materials testing for the project. The fee includes an \$33,000 sub-consultant allowance to cover this work. The actual work required depends on the CMAR means/methods and schedule. The Contractor will coordinate directly with Kumar & Associates when materials testing is required.